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9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11
 12 **CALIFORNIA DEPARTMENT OF**
 13 **TOXIC SUBSTANCES CONTROL**
 14 **and CALIFORNIA TOXIC**
 15 **SUBSTANCES CONTROL**
 16 **ACCOUNT,**

17 Plaintiffs,

18 v.

19 **J&S CHROME PLATING CO., a**
 20 **California corporation, KENFIELD**
 21 **DEV., LLC, a California limited**
 22 **liability company; and JAMES**
 23 **MANCUSO, an individual,**

24 Defendants.

Case No.: 2:14-CV02613 RGK (AJWx)

[PROPOSED] CONSENT DECREE
 BETWEEN PLAINTIFFS AND
 DEFENDANT JAMES MANCUSO;
 EXHIBITS

Judge: Hon. R. Gary Klausner
 Dept.: 850
 Trial Date: August 25, 2015
 Action Filed: April 7, 2014

25 I. INTRODUCTION

26 1. Plaintiff the State of California Department of Toxic Substances
 27 (“DTSC”) and the Toxic Substances Control Account (collectively “Plaintiffs”)
 28 filed a complaint in this matter pursuant to the Comprehensive Environmental
 Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq.
 and the California Hazardous Substances Account Act (“HSAA”), California

1 Health and Safety Code § 25300 et seq. against Defendants J&S Chrome Plating
2 Co. ("J&S Chrome"), Kenfield Dev., LLC, and James Mancuso ("Complaint"). In
3 the Complaint, Plaintiffs seek to recover costs they incurred responding to releases
4 and/or threatened releases of hazardous substances at or from the property located
5 at 6863 East Florence Place, Bell Gardens, California, 90201, in the County of Los
6 Angeles, California ("the Site."). CERCLA section 107(a), 42 U.S.C. § 9607(a).
7 Additionally, Plaintiffs seek declaratory relief under CERCLA section 113(g)(2),
8 42 U.S.C. § 9613(g)(2) that Defendants are jointly and severally liable for future
9 response costs to be incurred by Plaintiffs to address releases and/or threatened
10 releases of hazardous substances at or from the Site.

11 2. In the Complaint, Plaintiffs allege, in relevant part, the following:

12 a. The Site is located in the City of Bell Gardens across the street
13 from residential dwellings and within 500 feet of a public school. The Los
14 Angeles Regional Water Quality Control Board has designated drinking
15 water as a beneficial use for some groundwater in the vicinity of the Site, and
16 there is an inoperative drinking water well within 1000 feet of the Site.

17 b. From approximately 1953 to 1991, J&S Chrome operated as a
18 metal plating facility at the Site. In the plating operations at the Site, J&S
19 Chrome used chromium, cadmium, and zinc.

20 c. Settling Defendant James Mancuso was an owner of the Site
21 from approximately 1980 until 1999.

22 d. In February 1999, in response to a request by J&S Chrome,
23 and in accordance with Health and Safety Code section 25262, Cal/EPA
24 designated DTSC as the administering agency for all investigation and
25 remediation activities at the Site.

26 e. On December 18, 2002, DTSC issued an Imminent and
27 Substantial Endangerment Determination and Remedial Action Order ("2002
28 Order"), which included findings that hazardous substances had been

1 released and were present in the groundwater and/or soil at the Site in
2 sufficient concentrations to pose a substantial danger to public health and the
3 environment, and directing J&S Chrome to develop and implement a
4 complete site remediation strategy for the Site.

5 f. J&S Chrome performed some site assessment and remediation
6 of the Site but did not complete all of the actions required in the 2002 Order.

7 g. The Department completed an RI/FS for the Site. The
8 Remedial Investigation, approved in 2003, identified total chromium and
9 hexavalent chromium as the primary chemicals of concern on the Site. The
10 Feasibility Study, completed in 2005, identified remedial action alternatives
11 that could meet risk-based remedial goals, applicable or relevant and
12 appropriate requirements, and remedial action objectives for the Site.

13 h. In or about February 2008, DTSC divided the Site into two
14 Operable Units. Operable Unit 1 ("OU1") encompasses the soil
15 contamination, and Operable Unit 2 ("OU2") relates to the groundwater
16 contamination.

17 i. In April 2008, DTSC began implementation of the Remedial
18 Action Plan for OU1. DTSC's actions included removing soil contaminated
19 with hazardous substances and installing mechanisms to stabilize the
20 remaining hazardous substances.

21 j. In February 2010, DTSC began implementation of OU2
22 remediation as set forth in the 2009 Remedial Action Plan for OU2. DTSC's
23 actions included installing groundwater extraction wells and groundwater
24 treatment facilities.

25 k. The remedies for both OU1 and OU2 require ongoing
26 operation and maintenance.

27 3. Plaintiffs' response actions were necessary to remove and remedy the
28 hazardous substances released and/or threatened to be released at and from the Site.

1 DTSC's response actions include, but are not limited to, the following activities:
2 investigation; removal/remediation actions; enforcement/cost recovery; oversight;
3 public participation; and compliance with the California Environmental Quality
4 Act. DTSC's response actions were not inconsistent with the National Contingency
5 Plan, 40 C.F.R. Part 300.

6 4. As of June 2015, Plaintiffs' unreimbursed Response Costs related to the
7 Site exceeded \$8 million. Plaintiffs will continue to incur Response Costs related
8 to the Site, including enforcement costs to litigate the Complaint.

9 5. Settling Defendant filed an answer to the Complaint on September 12,
10 2014, ECF No. 17 and an amended answer on October 10, 2014, ECF No. 26.

11 6. On April 20, 2015, the Court issued an Order Pursuant to Stipulation
12 Granting, in Part, Plaintiffs' Motion for Partial Summary Judgment On the Liability
13 of J&S Chrome Plating and James Mancuso, ECF No. 48, that established that
14 "[Settling Defendant] is liable for all response costs incurred by DTSC in
15 responding to the release or threatened release of hazardous substances at the Site,"
16 but preserved [Settling Defendant's] right to assert certain affirmative defenses at
17 trial. The Order also establishes that [Settling Defendant] was an operator of the
18 Site at the time of disposal of hazardous substances at the Site. A copy of that Order
19 is attached hereto as Exhibit A.

20 7. Settling Defendant claimed inability to pay response costs and submitted
21 financial information for DTSC's review. Settling Defendant affirms that the
22 financial information provided to DTSC is true and correct.

23 8. DTSC has reviewed the financial information submitted by Settling
24 Defendant to determine whether he is financially able to pay response costs
25 incurred and to be incurred at the Site. In entering into this settlement, Plaintiffs
26 have relied on the financial information provided by Settling Defendant. The
27 Parties acknowledge that in 2006, Settling Defendant and his wife sold the shares of
28 J&S Chrome and that the purchaser, an entity called 6863 East Florence Place,

1 LLC, agreed to fully indemnify Settling Defendant for any losses related to the
2 release of hazardous materials at the Site. The Parties further acknowledge that
3 Settling Defendant is a named insured on policies that may provide indemnification
4 for the contamination at issue in this matter. However, Settling Defendant makes no
5 representations that indemnity coverage is provided by said insurance policies.

6 9. The Parties agree, and this Court, by entering this Consent Decree, finds,
7 that this Consent Decree has been negotiated by the Parties in good faith, settlement
8 of this matter will avoid expensive, prolonged and complicated litigation between
9 the Parties, and this Consent Decree is fair, reasonable, in the public interest and
10 consistent with the purpose of CERCLA.

11 **THEREFORE**, the Court, with the consent of the Parties to this
12 Consent Decree, hereby **ORDERS, ADJUDGES, AND DECREES**, as follows:

13 **II. JURISDICTION**

14 10. The Court has subject matter jurisdiction over the matters alleged in this
15 action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367(a) and CERCLA, section
16 113(b), 42 U.S.C. § 9613(b), and personal jurisdiction over each of the Parties.
17 Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b) and CERCLA
18 section 113(b), 42 U.S.C. § 9613(b). Solely for the purposes of this Consent
19 Decree and the underlying Complaint, Settling Defendant waives all objections and
20 defenses that Settling Defendant may have to the jurisdiction of the Court or to
21 venue in this district. Settling Defendant shall not challenge the terms of this
22 Consent Decree or this Court's jurisdiction to enter and enforce this Consent
23 Decree.

24 11. The Court shall retain jurisdiction over this matter for the purpose of
25 interpreting and enforcing the terms of this Consent Decree if necessary.

26 **III. SETTLEMENT OF DISPUTED CLAIMS**

27 12. This Consent Decree resolves Plaintiffs' claims against Settling
28 Defendant in the above-captioned action. Plaintiffs agree to resolve Settling

1 Defendant's liability in this action in exchange for consideration from Settling
2 Defendant, including payment by Settling Defendant to reimburse a portion of
3 Plaintiffs' Response Costs incurred and to be incurred at or in connection with
4 releases and/or threatened releases of hazardous substances at and/or from the Site.

5 13. Nothing in this Consent Decree shall be construed as an admission by
6 Settling Defendant of any issue of law or fact or of any violation of law, beyond
7 those issues of fact and law established in the Partial Summary Judgment Order,
8 ECF No. 48. Except as otherwise provided by this Consent Decree, this Consent
9 Decree shall not prejudice, waive or impair any right, remedy or defense that
10 Settling Defendant may have in any other or further legal proceeding.

11 14. The Parties consent to, and shall not challenge entry of this Consent
12 Decree or this Court's jurisdiction to enter and enforce this Consent Decree.
13 Upon approval and entry of this Consent Decree by the Court, this Consent Decree
14 shall constitute a final judgment between and among the Parties.

15 **IV. DEFINITIONS**

16 15. Unless otherwise expressly provided herein, terms used in this Consent
17 Decree that are defined in CERCLA, in the HSAA or in regulations promulgated
18 under CERCLA shall have the meaning assigned to them therein. Whenever terms
19 listed below are used in this Consent Decree, the definitions below shall apply.

20 16. "DTSC" shall mean the State of California Department of Toxic
21 Substances Control, and its predecessors and successors. DTSC is a public agency
22 of the State of California organized and existing under and pursuant to California
23 Health and Safety Code § 58000 et seq. Under California law, DTSC is the state
24 agency responsible for determining whether there has been a release and/or
25 threatened release of hazardous substances into the environment, and for
26 determining the actions to be taken in response thereto.

27 17. "Effective Date" shall mean the date the Court enters an Order approving
28 this Consent Decree.

1 18. "Parties" shall mean Plaintiffs and James Mancuso.

2 19. "Plaintiffs" shall mean DTSC and the Toxic Substances Control Account.

3 20. "Response Costs" shall mean all costs of "removal," "remedial action,"
4 or "response" as those terms are defined by CERCLA § 101, 42 U.S.C. § 9601,
5 related to the release and/or threatened release of hazardous substances at or from
6 the Site, including into soil and groundwater.

7 21. "Settling Defendant" shall mean James Mancuso.

8 22. "Site" shall mean the property located at 6863 East Florence Place, Bell
9 Gardens, California, 90201, in the County of Los Angeles, California. For
10 purposes of this Consent Decree, the Site includes the vertical and areal extent of
11 the hazardous substance contamination that is or has been present at, beneath,
12 and/or from the Site, including in the soil and/or groundwater.

13 **V. SETTLING DEFENDANT'S OBLIGATIONS**

14 23. Settling Defendant or his designee shall pay DTSC \$65,000 within thirty
15 (30) days of the Effective Date. Settling Defendant, or his designee shall make
16 payment in accordance with Paragraph 25.

17 24. Settling Defendant agrees to cooperate, and perform any appropriate act
18 to assist Plaintiffs' continuing response actions related to the Site including cost
19 recovery efforts for the Site. Such actions shall include but not be limited to
20 providing evidence in any dispute about insurance coverage.

21 25. Settling Defendant's payment obligations shall be deemed to have been
22 satisfied in full upon: (1) Settling Defendant's delivery of the payment due under
23 Paragraph 23. The payment specified in Paragraph 23 above, shall be made by
24 certified or cashier's check made payable to Cashier, California Department of
25 Toxic Substances Control, and shall bear on its face both the docket number of this
26 proceeding and the phrase "Site Code 300255."

27 a. The payments shall be sent to:
28

Cashier
Accounting Office, MS-21A
Department of Toxic Substances Control
1001 I Street
P.O. Box 806
Sacramento, CA 95812-0806

b. A copy of the check shall be mailed to:

Leslie Fredrickson, Attorney
California Department of Toxic Substances Control
Office of Legal Counsel, MS-23A
1001 I Street
P.O. Box 806
Sacramento, CA 95812-0806

Or e-mailed to leslie.fredrickson@dtsc.ca.gov in .pdf or .jpg format.

26. This Consent Decree is conditioned upon full execution of the Settling Defendant's obligations in in Paragraphs 24 through 25. If these conditions are not met, then this Consent Decree shall be voidable at the discretion of DTSC, and DTSC may proceed to litigate the Complaint against Settling Defendant.

VI. ACCESS TO INFORMATION

27. Within thirty (30) calendar days of the Effective Date, Settling Defendant shall have provided to DTSC copies of any and all records, documents, and information within his possession or control, or that of his agents, relating to: (a) the ownership, operation or control of the Site; (b) the purchase, storage, use, handling, generation, treatment, transportation, or disposal of hazardous substances in connection with the Site; (c) releases and/or threatened releases of hazardous substances at or from the Site, including the soil and groundwater; and (d) removal, remedial or response actions conducted by any person at the Site.

28. If after the Effective Date, Settling Defendant obtains or discovers any records, documents or information described in Paragraph 27 not previously provided to DTSC, Settling Defendant agrees to provide DTSC with copies of the additional records, documents or information within ten (10) calendar days of the date Settling Defendant discovers or obtains the records, documents or information.

1 **VII. COVENANT NOT TO SUE BY PLAINTIFFS**

2 29. Except as expressly provided in Section VIII (Plaintiffs' Reservation of
3 Rights) of this Consent Decree, Plaintiffs covenant not to sue Settling Defendant
4 pursuant to CERCLA or the HSAA to: (a) recover Plaintiffs' Response Costs
5 related to the Site, including response costs associated with groundwater
6 remediation relating to any hazardous substances released at the Site; or (b) require
7 Settling Defendant to conduct response actions, including removal or remedial
8 actions, related to the release and/or threatened release of hazardous substances at
9 or from the Site, including the soil and groundwater. This Covenant Not to Sue is
10 conditioned upon the complete and satisfactory performance by Settling Defendant
11 of all his obligations under this Consent Decree. This Covenant Not to Sue shall be
12 revoked and deemed not effective if Settling Defendant fails to fully perform on his
13 obligations stated in by Paragraphs 23 through 24 of this Consent Decree.

14 **VIII. PLAINTIFFS' RESERVATION OF RIGHTS**

15 30. Claims Regarding Other Matters. Plaintiffs reserve, and this Consent
16 Decree is without prejudice to, all rights against Settling Defendant with respect to
17 all matters not expressly included within Plaintiffs' Covenant Not to Sue (Section
18 VII).

19 31. Reservation of Claims. Plaintiffs reserves, and this Consent Decree is
20 without prejudice to, all rights against Settling Defendant with respect to the
21 following matters:

22 a. Failure of Settling Defendant to meet the requirements of this
23 Consent Decree;

24 b. Damage to natural resources, as defined in CERCLA section
25 101(6), 42 U.S.C. § 9601(6), including all costs incurred by any natural
26 resources trustees;

27

28

1 c. Liability resulting from Settling Defendant's introduction of
2 any hazardous substance, pollutant, or contaminant to the Site after the
3 Effective Date;

4 d. Liability resulting from overt acts by Settling Defendant after
5 the Effective Date that cause the exacerbation of the hazardous substance
6 conditions existing at or from the Site;

7 e. Claims based on liability arising from the past, present, or
8 future disposal of hazardous substances at sites or locations other than the
9 Site and

10 f. Claims based on criminal liability.

11 32. Financial Information. Notwithstanding any other provision in the
12 Consent Decree, DTSC reserves, and this Consent Decree is without prejudice to,
13 the right to institute proceedings in this action or in a new action, and/or to issue an
14 administrative order seeking to compel Settling Defendant to perform response
15 activities at the Site and/or to pay DTSC for additional response costs, if the
16 financial information provided by Settling Defendant or the financial certification
17 he made in Paragraph 7 of this Consent Decree, is false or, in any material respect,
18 inaccurate.

19 33. Government Authority. Except as expressly provided in the Consent
20 Decree, nothing in the Consent Decree is intended nor shall it be construed to
21 preclude DTSC from exercising its authority under any law, statute or regulation.
22 Furthermore, nothing in the Consent Decree is intended, nor shall it be construed, to
23 preclude any other state agency, department, board or entity or any federal entity
24 from exercising its authority under any law, statute or regulation.

25 34. Claims Against Other Persons. DTSC reserves, and this Consent Decree
26 is without prejudice to, all rights, claims, and causes of action Department may
27 have against any person other than Settling Defendant. Nothing in this Consent
28 Decree is intended to be nor shall it be construed as a release, covenant not to sue,

1 or compromise of any claim or cause of action, which DTSC may have against any
2 person or other entity not a signatory to this Consent Decree.

3 **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

4 35. Settling Defendant covenant not to sue, and agree not to assert any claims
5 or causes of action against Plaintiffs or any DTSC contractors or employees that
6 arise out of the transaction or occurrence that is the subject matter of the Plaintiffs'
7 complaint, or for any injuries, losses, costs, or damages caused or incurred as a
8 result of the performance of the requirements of this Consent Decree or the DTSC's
9 response actions at the Site.

10 36. In any legal proceedings that Plaintiffs may initiate against Settling
11 Defendant for non-compliance with this Consent Decree in such proceedings,
12 Settling Defendant may raise any and all defenses that Settling Defendant deems to
13 be relevant to the issue of whether or not it has complied with the terms of the
14 Consent Decree.

15 **X. EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION**

16 37. With regard to claims for contribution against Settling Defendant for
17 "Matters Addressed" in this Consent Decree, the Parties agree, and the Court finds
18 as follows:

19 a. This Consent Decree constitutes a judicially approved
20 settlement within the meaning of CERCLA section 113(f)(2), 42 U.S.C. §
21 9613(f)(2).

22 b. This Consent Decree requires that Settling Defendant pay
23 certain costs with respect to its liability at the Site.

24 c. Settling Defendant is entitled to the contribution protection
25 provided by CERCLA section 113(f)(2), 42 U.S.C. § 9613(f)(2), and by state
26 statutory and common law for the "Matters Addressed" in this Consent
27 Decree, except for actions and claims identified in Section VIII (Plaintiffs'
28 Reservation of Rights).

1 38. "Matters Addressed". The "Matters Addressed" in this Consent Decree
2 are all response actions taken or to be taken and all response costs incurred or to be
3 incurred, at or in connection with the Site, by Plaintiffs, or any other person.

4 39. The protection provided for in this Section X is conditioned upon
5 compliance by Settling Defendant with his obligations under Paragraphs 24 through
6 26 of this Consent Decree.

7 40. Nothing in this Consent Decree limits or impairs the right of Plaintiffs to
8 pursue any other person for unrecovered Response Costs incurred by Plaintiffs.

9 **XI. NOTIFICATION**

10 41. Notification to or communication among the Parties as required or
11 provided for in this Consent Decree shall be addressed as follows:

12 For Plaintiffs:

13 Hossein Nasari, Project Manager
14 Cypress Cleanup Program
15 California Department of Toxic Substances Control
16 Corporate Avenue
17 Cypress, CA 91311-6505

18 Leslie Fredrickson
19 California Department of Toxic Substances Control
20 Office of Legal Counsel, MS-23A
21 P.O. Box 806
22 Sacramento, CA 95812-0806

23 For Settling Defendants:

24 G. Christian Roux
25 Alston & Bird LLP
26 333 South Hope Street
27 16th Floor
28 Los Angeles, CA 90071

XII. GENERAL PROVISIONS

42. Parties Bound. This Consent Decree shall apply to, be binding upon, and
inure to the benefit of the Parties and their representatives, successors, heirs,
legatees, and assigns.

1 43. No Rights in Other Parties. Except as provided in Paragraph 43
2 regarding parties bound, nothing in this Consent Decree shall be construed to create
3 any rights in, or grant any cause of action to, any person not a party to this Consent
4 Decree.

5 44. No Waiver of Enforcement. The failure of DTSC to enforce any
6 provision of this Consent Decree shall in no way be deemed a waiver of such
7 provision or in any way affect the validity of this Consent Decree. The failure of
8 DTSC to enforce any such provision shall not preclude it from later enforcing the
9 same or any other provision of this Consent Decree.

10 45. Attorneys' Fees. Except as expressly provided in this Consent Decree,
11 the Parties will not seek to recover attorneys' fees and/or litigation costs against
12 each other.

13 46. Final Agreement. This Consent Decree constitutes the final, complete
14 and exclusive agreement and understanding between the Parties with respect to the
15 settlement embodied in this Consent Decree.

16 47. Modifications. This Consent Decree may be modified only upon written
17 approval of the Parties and with the consent of the Court.

18 48. Counterparts. This Consent Decree may be executed in two or more
19 counterparts, each of which shall be deemed an original, but all of which together
20 shall constitute one and the same instrument.

21 49. Agent. Settling Defendant has appointed and authorized the agents
22 identified in Section 41 to this Consent Decree to receive notices with respect to all
23 matters arising under or relating to this Consent Decree.

24 **XIII. ENTRY OF THE CONSENT DECREE**

25 50. This Consent Decree shall be lodged with the Court for a period of not
26 less than thirty (30) calendar days. The Consent Decree also is subject to a public
27 comment period of not less than thirty (30) calendar days. DTSC may modify or
28 withdraw its consent to this Consent Decree if comments received during the public

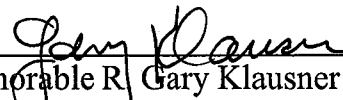
1 comment period disclose facts or considerations that indicate that this Consent
2 Decree is inappropriate, improper or inadequate. Settling Defendant consents to the
3 entry of this Consent Decree without further notice.

4 51. If, for any reason, the Court declines to approve this Consent Decree in
5 the form presented, this agreement is voidable at the sole discretion of any Party
6 and the terms of the Consent Decree may not be used as evidence in any litigation
7 between the Parties.

8 52. Each signatory to this Consent Decree certifies that he or she is fully
9 authorized by the Party he or she represents to enter into the terms and conditions of
10 this Consent Decree, to execute it on behalf of the party represented, and to legally
11 bind that party to all the terms and conditions of this Consent Decree.

12 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

13
14 Dated: NOV 24 2015, 2015


Honorable R. Gary Klausner
United States District Judge

15
16 Party Signatures on pages to follow
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18
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20
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23
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28

1 CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND
2 CALIFORNIA TOXIC SUBSTANCES CONTROL ACCOUNT

3
4 DATE: _____

By: _____
SIGNATURE

5
6 _____
NAME (printed or typed)

7
8 _____
TITLE (printed or typed)

9
10 JAMES MANCUSO

11
12 DATE: 8/20/15

By: James Mancuso
SIGNATURE

14
15 JAMES MANCUSO
NAME (printed or typed)

16
17
18 APPROVED AS TO FORM AND CONTENT:

19 Dated:

20 _____
James Potter
Deputy Attorney General
Attorney for Plaintiffs

21
22
23
24 Dated:

25 Alston & Bird
Attorney for Settling Defendant

1 CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND
2 CALIFORNIA TOXIC SUBSTANCES CONTROL ACCOUNT3
4 DATE: 8/19/15By: 

SIGNATURE

5
6 Raymond Leclerc
NAME (printed or typed)7
8 Division Chief
9 TITLE (printed or typed)

10 JAMES MANCUSO

11
12
13 DATE: _____

By: _____

SIGNATURE

14
15
16 NAME (printed or typed)17
18 APPROVED AS TO FORM AND CONTENT:19 Dated: 8/20/1520 
James Potter21 Deputy Attorney General
22 Attorney for Plaintiffs23
24 Dated: _____25 Alston & Bird
26 Attorney for Settling Defendant
27
28

Exhibit A

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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA
10 CENTRAL DISTRICT
11

12 CALIFORNIA DEPARTMENT OF
13 TOXIC SUBSTANCES CONTROL
14 and CALIFORNIA TOXIC
15 SUBSTANCES CONTROL
16 ACCOUNT,
17 Plaintiffs,
18 v.
19 J&S CHROME PLATING CO., a
20 California corporation, KENFIELD
21 DEV., LLC, a California limited
22 liability company; and JAMES
23 MANCUSO, an individual,
24 Defendants.
25

Case No.: 2:14-CV 02613-RGK (AJW)

[PROPOSED] ORDER PURSUANT
TO STIPULATION GRANTING IN
PART PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT ON THE LIABILITY
OF J&S CHROME PLATING AND
JAMES MANCUSO

Judge: The Honorable R.
Gary Klausner
Trial Date: August 25, 2015
Action Filed: April 7, 2014

26 Plaintiffs in this matter, the State of California Department of Toxic
27 Substances Control and California Toxic Substances Control Account (together,
28 "Plaintiffs") filed a complaint alleging *inter alia* that Defendants J&S Chrome
Plating Company and James Mancuso (together "Defendants") are liable for
Plaintiffs' response costs incurred at the J&S Chrome Plating Company Site (the
"Motion") pursuant to section 107 of the Comprehensive Environmental Response,

1 Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a).

2 On April 13, 2015, Plaintiffs filed a Motion for Partial Summary Judgment
3 on the liability of Defendants for response costs that Plaintiffs incurred at the Site.
4 Thereafter, Plaintiffs and Defendants (together "Parties") stipulated to the granting
5 of the motion in part as stated herein.

6 In accordance with the Parties' stipulation, the court finds that Defendants
7 J&S Chrome Plating Company and James Mancuso are liable under CERCLA
8 section 107, 42 U.S.C. § 9607(a), as follows:

9 **UNDISPUTED FACTS**

10 1. The property located at 6863 East Florence Place, Bell Gardens,
11 California, 90201 ("the Site") is an area where hazardous substances, including
12 hexavalent chromium, cadmium, and zinc have been deposited, stored, disposed of,
13 or placed or otherwise come to be located in soil and groundwater.

14 2. The Site constitutes a "facility" within the meaning of 42 U.S.C. §
15 9601(9).

16 3. Plaintiffs have incurred costs in responding to the release or threatened
17 release of hazardous substances at the Site.

18 4. J&S Chrome Plating Company is the current owner of the Site.

19 5. From 1980 through 1999, James Mancuso was an owner of the Site.

20 6. Hazardous substances were disposed at the Site. The period of
21 disposal of hazardous substances included the period between 1981 through 1986.

22 7. J&S Chrome Plating Company and James Mancuso were each
23 operators of the Site at the time of disposal of hazardous substances at the Site.

24 **CONCLUSIONS OF LAW**

25 1. The Site constitutes a "facility" within the meaning of 42 U.S.C. §
26 9601(9).

27 2. The Site is a "facility" from which there has been a "release" or
28 "threatened release" of "hazardous substances" within the meaning of CERCLA

1 section 101, 42 U.S.C. § 9601.

2 3. Defendant J&S Chrome Plating Company is liable for all response
3 costs incurred by DTSC in responding to the release or threatened release of
4 hazardous substances at the Site.

5 4. Defendant James Mancuso is liable for all response costs incurred by
6 DTSC in responding to the release or threatened release of hazardous substances at
7 the Site.

8 5. The amount of Plaintiff's responses costs remain to be determined, either
9 by further motion or at trial of this matter. Defendants reserve the right to argue
10 that (1) they are not liable for response costs that they demonstrate are inconsistent
11 with the National Oil and Hazardous Substances Pollution Contingency Plan, 40
12 CFR §300 ("NCP"); (2) they are not liable for costs caused by releases of
13 hazardous substances from the former Chrome Crankshaft Company facility to the
14 extent they demonstrate that harms arising from releases of hazardous substances
15 from the Chrome Crankshaft Company property are divisible from harms arising
16 from releases of hazardous substances from 6863 East Florence Place; and (3) they
17 are not liable for response costs to the extent they demonstrate that recovery of such

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1 costs is barred by the applicable statute of limitations. Plaintiffs reserve the right to
2 contest Defendants' arguments.

3 IT IS SO ORDERED

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5 DATED: April 30, 2015

Jay Klausner

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United States District Judge

ALTERNATIVE ORDER

The Court does not approve the foregoing order. Plaintiffs' Motion for Partial
Summary Judgment will be set for hearing on June 1, 2015. In that instance,
Defendants' opposition briefs will be due on May 11 and Plaintiffs' reply brief will
be due on May 18.

IT IS SO ORDERED

DATED: _____

United States District Judge